



OFFICE OF THE POLICE COMMISSIONER
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April 7, 2015

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Martin Palazzo**
Tax Registry No. 935458
Patrol Borough Bronx Task Force
Disciplinary Case No. 2013-10146

Police Officer John Loftus
Tax Registry No. 935198
Patrol Borough Bronx Task Force
Disciplinary Case No. 2013-10147

The above named members of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on April 22 and June 20, 2014, and were charged with the following:

DISCIPLINARY CASE NO. 2013-10146

1. Said Police Officer Martin Palazzo, on or about April 9, 2012, at approximately 2230 hours, while assigned to the Patrol Borough Bronx Task Force Command and on duty, in the vicinity of Bailey Place and Bailey Avenue, Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he issued a summons to Louis Soto for Possession of Knives or Instruments (AC § 10-133), without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT -
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 2013-10147

1. Said Police Officer John Loftus, on or about April 9, 2012, at approximately 2230 hours, while assigned to the Patrol Borough Bronx Task Force Command and on duty, in the vicinity of Bailey Place and Bailey Avenue, Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched Louis Soto's vehicle without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT -
PROHIBITED CONDUCT**

POLICE OFFICER MARTIN PALAZZO &
POLICE OFFICER JOHN LOFTUS

DISCIPLINARY CASE NO. 2013-10146
DISCIPLINARY CASE NO. 2013-10147

In a Memorandum dated January 5, 2015, Assistant Deputy Commissioner Daniels-Peyster found both Respondents Guilty in Disciplinary Case Nos. 2013-10146 and 2013-10147. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of issues and circumstances in this matter and deem that a lesser penalty is warranted. Therefore, both Respondents are to forfeit three (3) vacation days, as a disciplinary penalty.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

January 5, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Martin Palazzo
Tax Registry No. 935458
Patrol Borough Bronx Task Force
Disciplinary Case No. 2013-10146

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Tax Registry No. 935198
Patrol Borough Bronx Task Force
Disciplinary Case No. 2013-10147

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P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT

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P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Nicole Junior, Esq. Respondents were represented by John Tynan, Esq., Worth, Longworth and London, LLP.

Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-10146

Respondent Palazzo is found Guilty as charged.

Disciplinary Case No. 2013-10147

Respondent Loftus is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is undisputed that, while assigned to the 50 Precinct on the night of April 9, 2012, Respondents stopped complainant, Louis Soto, as he was double-parked on Bailey Avenue in the Bronx. One of Soto's headlights was out. Respondents double-parked their Radio Motor Patrol vehicle (RMP) directly behind Soto. Respondent Loftus approached the driver's side of Soto's car, and Respondent Palazzo approached the passenger's side. Soto had a knife clipped to the inside of his pocket, and Respondents ordered him out of the car. While Respondent Palazzo frisked Soto near the trunk, Respondent Loftus searched inside the vehicle. The encounter ended

with Respondent Palazzo issuing Soto two summonses: one for disorderly conduct and the other for having a knife in public view.

The CCRB's Case

CCRB called Louis Soto as its sole witness.

Louis Soto

Soto has been employed as a case manager at HSBC Bank since July 2013. He previously spent seven years working as a senior clerk/referral coordinator at Columbia University's Department of Surgery. He graduated *magna cum laude* from John Jay College with a Bachelor's of Science degree in Criminal Justice. He has pending job applications in the law enforcement field. He has never before filed a complaint against a police officer. He does not have a lawsuit in connection with this matter.

Soto testified that on the evening of the incident, he went to his parents' investment property, where he used a knife to break down garbage and work on renovation projects. He then headed home, traveling southbound on Bailey Avenue. Bailey Avenue has two northbound lanes and two southbound lanes. He was double-parked, waiting for a spot to become available, when Respondents approached his car. His car was in drive, and his foot was on the brake. He had been parked in that manner for a minute or two. He did not recall any other cars honking or swerving to avoid an accident during that period. [CCRB Exhibit (CCRBX) 1 is a street map view of the area. DX 2 is an aerial view of the street. DX 3 and 4 are photographs of the incident location.]

When Respondent Loftus approached, he asked to see Soto's license and registration. Soto gave him the requested documentation and asked why he was stopped. Respondent Loftus informed him that his headlight was out. Because Respondent Palazzo was standing at the passenger's side of the car, Soto rolled down the passenger's side window to put him at ease. Respondent Palazzo stuck his head in the vehicle and asked Soto what he did for a living. Soto wanted to know what his profession had to do with the stop, and Respondent Palazzo explained that the reason he asked about Soto's job was because he wanted to know why Soto had a knife in his pocket. Respondent Palazzo asked Soto to remove the knife. Soto described the knife as a pocket knife with a clip. The blade, which was three inches long, was closed and inside his pocket. From the outside, only the clip was visible. To an observer it would have looked like a black pen was clipped to his right pocket. In order to open the knife, Soto used two hands, with one hand holding the base and the other hand pulling out the blade. He typically left the knife at the investment property following the breakdown of the garbage.

Respondent Palazzo told Soto that he was in possession of a gravity knife, which was a misdemeanor. While he spoke, Respondent Palazzo unsuccessfully attempted three or four times to open the knife with one hand. He then instructed Soto to get out of the car. Soto walked to the rear of the car, where Respondent Palazzo was standing. At one point, Respondent Loftus said something about Soto missing a front license plate. With Respondent Palazzo's permission, Soto walked to the front of the car and pointed out that the plate was in fact affixed to the bumper but was off center. Soto then returned to the rear of the car, where Respondent Palazzo frisked him. Respondent Loftus, meanwhile, searched the car, leaning in the car through the driver's side door. He searched the center console, under the driver's seat, under the visor, and

in the glove compartment. According to Soto, Respondent Loftus left his belongings in disarray. Soto did not give permission for the search.

Respondent Palazzo instructed Soto to get back in the car, where he waited for 15 to 20 minutes before Respondent Palazzo released him with the summonses. The summons about the knife in public view was ultimately dismissed in criminal court. [DX 5 is a copy of the summons for knife in public view, and DX 6 is the certificate of disposition.] Respondents did not issue Soto a summons for double parking or for having a gravity knife.

Respondents' Case

Respondents testified in their own behalf.

Respondent Loftus

Respondent Loftus, a ten-year member of the Department, is currently assigned to the Patrol Borough Bronx Task Force. He and Respondent Palazzo have been partners for eight years. It was approximately 10:30 p.m. when they noticed that Soto's car was double-parked and had a headlight out. Bailey Avenue is a busy road, but Respondent Loftus did not recall if other cars had to go around Soto's car in order to pass.

When Respondent Loftus requested his license and registration, Soto was not compliant. Respondent Loftus explained that Soto was not forthcoming with his documentation and asked several questions, such as, "Why am I being stopped, why are you bothering me?" Respondent Loftus repeated his request several times. Respondent Palazzo standing on the passenger's side of the car, meanwhile, signaled to Respondent Loftus that he saw "something" in the vehicle. At that point, Respondent Loftus finally retrieved Soto's documentation and asked him to step out

of the car. Soto complied. The officers had him walk to the rear of the car, and Respondent Palazzo followed.

Respondent Loftus described his search of Soto's car: "I quickly went inside of [the] vehicle and just did a quick visible inspection of his vehicle in the front area." The area search included the center console, the front seats, and the car floor. He explained why he focused on that area: "The center console, what I came to find out was his knife was on his right side. So it would have been reasonable to think that he might have put something else in that center console." He described the center console as being within Soto's "reachable, lungeable area." The primary purpose of the search was to make sure the vehicle was safe and that there were no other weapons in the area. Respondent Loftus did not open the glove compartment or the trunk. Nor did he look in the back seat. After the search, which took less than a minute, the officers allowed Soto back in the car.

Respondent Loftus did not document in his Activity Log the stop or search of Soto's vehicle. He conceded that he never personally saw a weapon in the car and that Soto did not give permission for the search.

Respondent Palazzo

Respondent Palazzo, a ten-year member of the service, testified that what drew his attention to Soto's car was that it was double-parked with a headlight out across the street from a building that had had numerous shootings. Soto did not have his hazard lights on, and Respondent Palazzo saw two cars that had to swerve to get around him.

Respondent Palazzo approached the passenger's side of the car with his flashlight on. Approximately 20 seconds into the stop, he noticed the knife clipped to Soto's right pocket. He

clarified that he only saw the clip part of the knife, not the blade. He proceeded to ask Soto a couple of questions about what he did for a living. Soto asked why that mattered, and Respondent Palazzo explained that in his experience the only people who carried knives were electricians and construction workers. He asked Soto to take the knife out and place it on the seat. Soto was compliant, and Respondent Palazzo took the knife. Respondent Palazzo did not see any other weapons in the car or on Soto's person.

Soto went to the rear of the vehicle, where Respondent Palazzo frisked him. Respondent Palazzo did not find anything in the frisk. Because Respondent Loftus deemed the car safe, Soto was allowed back inside while Respondent Palazzo prepared the summonses. The violation he cited on the summons for the knife was Administration Code section 10-133, which deals with blades measuring four inches or greater that are visible in public places. Respondent Palazzo described Soto's knife as a contour knife. According to Respondent Palazzo, it was possible to open the knife with one hand by the flick of a finger. He issued the disorderly conduct summons because Soto was blocking traffic.

FINDINGS AND ANALYSIS

Respondent Palazzo stands charged with issuing a summons to Soto for Possession of Knives or Instruments without sufficient legal authority. Administrative Code section 10-133 provides that it shall be unlawful for any person to carry on his person or have in his possession in any public place a knife with a blade of four or more inches in length. The section carves out an exception for people who carry knives for a lawful purpose.

The Court finds for several reasons that Respondent Palazzo wrongly applied the Administrative Code section to Soto's situation. First, the knife Soto carried on the day of the

incident had a three-inch blade, according to Soto, not an almost four-inch blade as Respondent Palazzo alleged. Second, if given the chance, Soto would have been able to explain to the officers that he was carrying the knife for a lawful purpose. He had just been to his parents' investment property, where he had used the knife to break down garbage and work on renovation projects. This type of work certainly falls under the section's exception provision. Third, and most troubling, is the fact that Soto did not even have the knife in public. The knife was clipped to the inside of Soto's pocket, and Soto was inside his vehicle. Because it was nighttime, Respondent Palazzo was able to see the knife clip only after Soto rolled down the window and he (Respondent Palazzo) looked inside the car with a flashlight. Even at that point, Respondent Palazzo was only able to see the clip part of the knife, which Soto explained looked the same as if a pen were clipped to the inside of his pocket. It was only Respondent Palazzo's request to the see the knife that brought it out into public view.

Respondent Loftus stands charged with searching Soto's vehicle without sufficient legal authority. Respondent Loftus explained that the primary purpose of the search was to make sure the vehicle was safe and that there were no other weapons in the area. While it was in dispute whether the search included the glove compartment, the Court finds that the search was unlawful even if it accepts as truthful Respondent Loftus' testimony that the search area included just the center console, the front seats, and the car floor. A police officer may search the grabbable areas of a vehicle when there is reasonable suspicion of criminal activity, and there is an articulable basis to fear for the officers' safety. *People v Torres*, 74 NY2d 224 (1989). In the present case, Respondents stopped Soto for being double-parked and for having a headlight out. While the sighting of the knife in his pocket certainly justified some further questioning on the part of Respondents, it would be a stretch to say that there existed reasonable suspicion of criminal

activity. Soto was a credible and articulate witness, who came across as an upstanding young man. As discussed above, he would have been able to provide Respondents with a legitimate explanation for carrying the knife.

As for Respondent Loftus' claim that the purpose of the search was for safety, this is inconsistent with the manner in which Respondents allowed Soto to walk back and forth around the incident scene so nonchalantly. Soto walked to the rear of the car to meet with Respondent Palazzo, to the front of the car to show Respondent Loftus the license plate, and then back to the rear of the car, where he was frisked. At no point did Respondents restrain Soto or escort him from one part of the car to the next. Had Respondents actually been in fear for their safety, they would have undoubtedly handled Soto with greater caution.

Based on the foregoing, Respondents are found Guilty of the charged misconduct.

PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY2d 222 (1974). Respondents were appointed to the Department on July 1, 2004. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

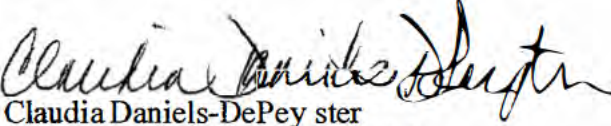
Respondent Palazzo has been found Guilty of issuing a summons to Soto, and Respondent Loftus has been found Guilty of searching Soto's vehicle, both without sufficient legal authority. The CCRB recommended a penalty of ten vacation days for each Respondent. While this penalty recommendation might seem severe, the Court agrees that it is warranted in this case. Based on Soto's credible testimony and Respondents' demeanors at trial, the Court

was left with the impression that the police action Respondents took against Soto was motivated by personal animus. Perhaps they were bothered by the fact that Soto asked questions, such as why he was stopped or why the officers needed to know what line of work he was in. Contrary to Respondents' testimony, Soto asking these questions did not equate to noncompliance.

The Court's conclusion regarding Respondents' motivation is supported by Respondent Palazzo's issuance of the disorderly conduct summons. While it is undisputed that Soto was double-parked, Respondent Palazzo's claim that he issued the summons because Soto's car was blocking traffic is suspect. Bailey Avenue has two traffic lanes in each direction, and Respondent Loftus did not recall other vehicles having to move around Soto in order to pass. Had double-parking on that block actually obstructed traffic, it seems unlikely that Respondents would have double-parked their RMP directly behind Soto, thereby obstructing traffic for the entire 20-minute-long encounter.

Accordingly, it is recommended that Respondents each forfeit a penalty of ten vacation days.

Respectfully submitted,


Claudia Daniels-DePeyer
Assistant Deputy Commissioner Trials

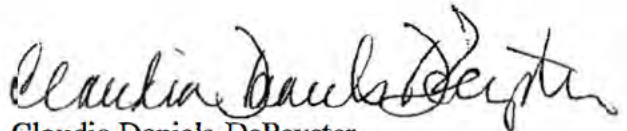


POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MARTIN PALAZZO
TAX REGISTRY NO. 935458
DISCIPLINARY CASE NO. 2013-10146

In 2011 and 2013, Respondent Palazzo received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He was rated 4.5 “Extremely Competent/Highly Competent” in 2012. [REDACTED]
[REDACTED]. He has no prior formal disciplinary record.

For your consideration.

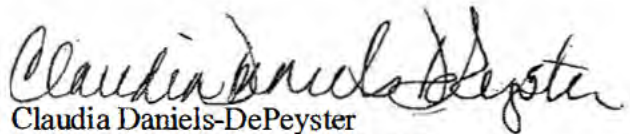

Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOHN LOFTUS
TAX REGISTRY NO. 935198
DISCIPLINARY CASE NO. 2013-10147

In 2011 and 2013, Respondent Loftus received an overall rating of 4.0 "Highly Competent" on his annual performance evaluation. He was rated 4.5 "Extremely Competent/Highly Competent" in 2012. [REDACTED]
[REDACTED]. He has no prior formal disciplinary record.

For your consideration.


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Assistant Deputy Commissioner Trials